

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7202 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

TAKHATSING SHIVAJI

Versus

DY. COMMISSIONER OF POLICE

Appearance:

None present for Petitioner
MR HL JANI for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/12/97

ORAL JUDGEMENT

#. The matter was called out for hearing in the first round, then in the second round and lastly in the third round but none put appearance on behalf of the petitioner. Heard learned counsel for respondents and perused the Specail Civil Application.

#. Challenge has been made by the petitioner to the

order of respondent No.1 dated 20th December 1985 under which after departmental inquiry, the penalty of putting the petitioner on the lower post and treating the period of suspension as such has been made.

#. The learned counsel for the respondents raised a preliminary objection that the petitioner has alternative remedy of appeal against this order and that remedy has not been availed of. This petition filed by the petitioner against the order of penalty, which was appealable is not maintainable. Under Rule 6 of the Bombay Police (Punishment & Appeal) Rules, 1956, the petitioner, against the order impugned, has a right of appeal but that remedy has not been availed.

#. In para-7 of the Special Civil Application, the petitioner has made a wrong statement of fact that he has no other alternative efficacious remedy except by way of this petition. When a right of appeal against the order of penalty given in a disciplinary matter is available to the petitioner, then he should have availed of that remedy rather than to straightaway approach this Court. Litigations should be discouraged to come directly before this Court where there is a right of appeal or revision against the impugned orders. The litigants should be first asked to avail of the alternative remedy and then if ultimately the matter is decided against them, they may take appropriate legal remedy available. In disciplinary matters where sufficient redressal forums are provided in respective Departments, filing of this Special Civil Application before this Court deserves to be deprecated. In this matter, the petitioner has been protected by this Court by grant of interim relief and that interim relief continues for all these years.

#. This Special Civil Application is dismissed only on the ground that the petitioner has alternative remedy of appeal against the order impugned in this Special Civil Application. The petitioner, if he so desires, may file appeal against the order impugned in this Special Civil Application before the appellate authority within a period of ten days from the date of receipt of certified copy of this order and thereafter the appellate authority shall decide the appeal within three months. Till then the interim relief granted by this Court shall continue. However, while deciding the appeal, the appellate authority may not be influenced by the fact that this Special Civil Application has been admitted by this Court and interim relief has also been granted. It has to decide the appeal in accordance with law. In case the petitioner fails to file the appeal within time as

aforesaid, the interim relief shall come to an end automatically. The Special Civil Application and Rule stand disposed of in aforesaid terms with no order as to costs.

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(sunil)